IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1924 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MN PANCHAL

Versus

GUJARAT FILAMENTS LTD

Appearance:

MR MS MANSURI for Petitioners

M/S PATEL ADVOCATES for Respondent No. 1

MR BG JANI for Respondent No. 2

NOTICE SERVED BY DS for Respondent No. 3, 4

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 03/05/2000

ORAL JUDGEMENT

Learned advocate Mr. Mansuri is appearing for the petitioner and learned advocate Mr. Jani is

appearing for the respondent Company and learned advocate Mr. H.C.Patel is appearing for M/s. Patel Advocates for respondent No. 4.

Rule. Service of rule has been waived by Mr. Jani appearing for respondent No. 1 Company and Mr. Patel, learned advocate appearing for M/s. Patel Advocates for respondent 4. On the facts and in the circumstances of the case, the matter is taken up for final hearing today itself.

The facts of the present petition, in brief, are that the respondent company has established factory in tribal area of Panchmahals District under various concessions, incentives and subsidies and has employed 128 workmen and other members of staff. According to the petitioner, the company has earned huge profit out of this factory and in turn has diverted the same to the other industries lime cement in Rajasthan after establishing cement division. According to the petitioners, the company is doing well in its business of yarn division which is grown like anything in last five years where in a new market for exports of its products found in Gulf Countries. According to the petitioner, respondent no. 1 to 3 has intentionally and with an ulterior motive not paid the bill of electricity consumption charges to the Gujarat Electricity Board in June, 1999 and the Gujarat Electricity Board has, therefore, disconnected the power supply of the respondent company. The respondent company has then published the notice on 24.6.1999 declaring the lay off for indefinite period due to disconnection of the power supply by the Gujarat Electricity Board. Respondent NO.1 to 3 are employing more than 100 workers and the present strength of the workmen is 128 and hence Chapter V-B of the ID Act will apply to them and under section 25-M of the ID Act, previous permission of the specified authority is required to be obtained for lay off. According to the petitioners, not only that but Model Standing Orders are also applicable to them. According to the petitioners, the respondents No. 1 to 3 have not only imposed the lay off which is otherwise prohibited under section 25M of the ID Act but have also not paid any wages or compensation for the said lay off. Therefore, complaint was filed by the petitioners before the Government Labour Officer on 30.6.1999 and he has sent a proposal for prosecution but till this date, no complaint has been filed against the respondent company for such illegal and ab initio void lay off and 125 workmen are facing starvation. That the petitioners and other employees re reporting for duty everyday and also

marking their presence but are not paid any wages or compensation till this date. The petitioners have submitted that sub section 8 of section 25 M provides that where no application for permission under sub section(1) is made or where no application for permission under sub section (3) has been made within the period specified therein, or where the permission for the lay off or continuance of lay off has been refused, such lay off shall be deemed to be illegal from the date on which the workmen have been laid off and the workman shall be entitled to all the benefits under any law for the time being in force as if they had not been laid off. That the respondent company has not paid statutory bonus for the year 1998-99 and bonus for the year 1999-2000 is going to become payable after 31st March, 2000. That the petitioner no.5 union and respondent no.1 company have signed a settlement during the conciliation proceeding for the period commencing from September, 1997 upto 31st August, 2000 under which they are legally obliged to pay Rs.1400.00 per year in the month of January being a cash allowance for uniform and leave travel concession but the said amount is not paid in January, 1999 as well as in January, 2000 and the same has also remained unpaid. That the action of the respondent is, in fact, illegal lock out and illegal closure also as they have not published any notice or made any declaration after notice annexure "A". The petitioners have submitted that because of the electricity power disconnection by the Gujarat Electricity Board, the workers are required to come and each of the workmen is required to remain present and mark presence every day.

This Court, while issuing notice to the respondent, has directed respondent no. 4 to immediately inquire in respect of the question involved in the present petition and if the respondent no.1 has given lay off to the concerned workmen in this petition, necessary immediate steps shall have to be taken by respondent no.4. Respondent No. 4 was directed to submit his report before this court on returnable date i.e. 17.4.2000.

The respondent No.1 has appeared and has filed affidavit in reply and has pointed out that the respondent No.1 is a Public Limited Co. and not a State within the meaning of Art. 12 of the Constitution of India. The respondent No.1 has, therefore, submitted that the respondent company is not amenable to the writ jurisdiction of this court. It is also contended by the first respondent that the petitioner is having alternative equally efficacious remedy under the

Industrial Disputes Act,1947. It is also pointed out that since June, 1999, there is no manufacturing and production activities due to various problems and respondent No. 2 is not the full time Director having full charge and control over the affairs of the Company as local resident director and that he is not looking after the day to day affairs of the company including production, planning, marketing, accounts and industrial relations etc. as alleged. It is submitted that he is only an ordinary director. It is submitted that the respondent No. 3 is not the chairman or director a member of the board of directors of the company since after 25.9.1997. It is submitted that he was nominee director of the Gujarat Industrial Investment Corporation but in any case, he is no longer with the company in any capacity since 25.9.1997. It is further submitted that the respondent company has established factory in Panchmahals However, it is not true that the respondent company has employed 128 workers and other staff members as alleged. The deponent has denied that the company has earned huge profit out of the said factory and has diverted the same to cement unit as alleged in public issue and no fund is diverted from the present factory. It is further submitted that as per the audited balance sheets of the company, the company has been continuously incurring losses since last four years and over a span of period of thirteen years, the company has made net profit of Rs.554.81 lacs in aggregate in certain years as against the loss of Rs.1341.03 lacs in aggregate in certain years. The deponent has denied that the company is doing well in its business of yarn division. It is submitted that in fact, the company utilization has continuously been reducing from 76.5% in the year 1994-95 to 45.16% in the year 1998-99. That the production is totally stopped since after June, 1999. It is pointed out that the company is having no fund to meet with the current liability including payment of electricity bill to the electricity board and due to that circumstance beyond the company's control, the company had to declare lay off due to non availability of power supply and there is no any mala fide intention on the party of the company as alleged. it is also pointed out by the respondent company that the ICICI had filed Recovery Suit bearing No. 2940 of 1999 in the High Court of Bombay against the respondent company and has obtained prohibitory injunction orders restraining the company from dealing with the movable or immovable properties and from realising book debts and utilizing the sale proceeds. It is also pointed out that such similar type of orders have been passed by the Debt Recovery Tribunal, Ahmedabad in Recovery Application NO. 10 of 2000 filed by the State

Bank of India, Halol against the respondent Company. It is also submitted that two creditors namely M/s. Associated bearing Corporation and M/s. Shriram Industrial Have filed winding up petition bearing Company Petition No. 1 of 2000 and 27 of 2000 on 7.2.2000 and 16.3.2000 respectively for the recovery of their alleged dues before this Court and the said company petitions are pending before this court. It is also submitted that there is no lockout or closure of the respondent company as alleged. The letter dated 11.4.2000 of the Government Labour Officer has been produced on record in respect of bonus and violation of Sec. 25-M sub clause (1); prosecution case no. 504 of 2000 has been filed against the respondent company on 11.4.2000.

Rejoinder to the said reply has been filed wherein the petitioner has submitted that the petition against the private company can also be entertained in case of violation of statutory and mandatory provisions which is affecting mass of the workmen.

Respondent NO. 4 has filed affidavit in reply to this petition wherein certain facts have been admitted. Respondent NO. 4 has admitted that it is true that more than 100 employees have been employed and it was required to obtain prior permission from the specified authority under Sec. 25-M of the Industrial Disputes Act,1947 before laying off their workmen. It is also made clear that for violation of Sec. 25-M of the ID Act,criminal case no. 524 of 2000 has been filed against the respondent company before the court of Judicial Magistrate,First Class, Halol on 11.4.2000. There are number of criminal cases filed against the respondent company in respect of non payment of bonus, non payment of minimum wages by the Respondent No. 4 which details given in reply dated 27.4.2000.

Lastly, the respondent No.1 Company has filed additional affidavit in reply and has contended that the company is having 60 m.t.finished goods approximately and is having 20 mt. waste material lying in the godowns. Out of the said 60 MT finished goods, only approximately 14 mt finished goods are of the standard quality which can fetch market value. The rest of the finished goods is either of sub standard quality or non moving products. The non moving material is lying in the godown since one year to six years as the same is not in demand in the market. It is further contended in the additional affidavit in reply filed by respondent no.1 company that the company is agreeable to dispose of the said materials under the order of this Court and realize the sale

proceeds thereof and other outstanding book debts also and that the respondent company is also agreeable to give first priority to the payment of all the employees. It is further pointed out that the company shall have to meet with the necessary selling expenses, statutory payments like excise duty,sales tax, provident fund and ESI Payments, routine office expenses, legal expenses etc. It is pointed out that besides settling the lay off compensation, the respondent company has to make payment to safe guard the assets of the company in the form of the payment to the security agency. It has however been pointed out that there are prohibitory orders issued by the High court of Bombay in the matter of Recovery Suit No. 2940 of 1999 filed by the ICICI Ltd. and also by the Debt Recovery Tribunal Ahmedabad in Recovery Application NO. 10 of 2000 filed by the State Bank of India, Halol restraining the company from dealing with the movables and immovable assets of the company including book debt which orders are operating as on today.It is also pointed out that the Naya Gujarat Kamdar Union has filed complaint application no. 26 of 1999 in pending reference IT (D) NO.60 of 1997 and reference (IT) (D) No. 60 of 1992 seeking injunction against the company restraining from moving the materials as listed in the said complaint from the factory premises and also filed temporary injunction application Exh.2 which is pending for final hearing and the industrial tribunal has vacated union's application Exh. 17 in respect of appointment of court commissioner by order dated 17.2.99. However, application Exh. 2 for temporary injunction is still pending for hearing and the stay is in operation as modified below Exh. 8 application preferred by the respondent company. The company has ultimately pointed out that in the aforesaid circumstances, appropriate orders may be passed resolving the issue in question. The company has further submitted that in view of the readiness and willingness shown by the company to settle the payment of lay off compensation of the workers, pursuant to the complaint made by the petitioner association to the Government Labour Officer who has passed the order of prosecution against the company,directors and executives may be directed to be withdrawn and also the said Government Labour Officer may be directed not to take any further action against the respondents and further the petitioners be directed to withdraw their complaint.

During the pendency of this petition, the petitioners have filed civil application pointing out that in view of the affidavit filed by the respondent No.1 Co., it appears that the company is still having

finished goods worth Rs.80 lacs approximately with it and the same can be sold for the purpose of paying wages of the workmen due from June, 1999 till date. It has further been pointed out that since the day of lay off in June 1999, all the workers are facing unexplainable difficulties as stated in rejoinder affidavit in detail. The petitioners have, therefore,prayed in the civil application that the respondents may be directed to pay full wages to all the workmen for the period commencing from June, 1999 till the closure application is decided after selling the finished goods and raw materials or by any other source as described in this affidavit.

Learned advocate Mr.Mansuri appearing for the petitioners has pointed out that the company has already applied to the specified authority for closure under sec.25-O of the Industrial Disputes Act, 1947. He has also pointed out and has produced on record order passed below Exh. 8 in complaint IT No. 27 of 1999, at Exh. 12 wherein the tribunal has passed the orders on 6th July, 1999 and has allowed the shifting of the finished goods, stores and spare parts,godown and raw material and the articles being kept in the godown and the records relating to accounts and salary and the computers being kept at Halol Office to Vadodara Office and has also permitted the employees doing work in that regard to seat in the Vadodara Office and as regards other material, interim stay granted earlier was ordered to continue and it was further clarified that all these orders were subject to the orders that may be passed after hearing of the application Exh. 2.

I have considered the averments made in the petition as well as the averments made in the affidavit in reply and additional affidavit in reply filed by the respondents and the rejoinder filed thereto by the petitioners.

In this case, one fact is not in dispute that the respondent company has not paid the electricity charges to the Gujarat Electricity Board and,therefore, as a result thereof, the elecltricity supply was disconnected by the GUJARAT ELECTRICITY Board and, therefore, the respondent company has issued notice on 24th June, 1999 to lay off the workmen with the company with a direction that each of the workmen shall have to report every day at the company and to mark their presence in the muster roll of the company. SO, the workmen concerned are without wages from June, 1999. It is also not in dispute that Chapter V-B of the Industrial Disputes Act, 1947 is applicable to the respondent company and before laying

off the workmen, no prior permission has been obtained by the respondent Co. from the Specified AUthority and, therefore, prosecution has been filed against the company by the Government Labour Officer as stated above before the learned Judicial Magistrate,F.C., Halol on 11th April, 2000. There are two prohibitory orders passed against the company. One by the High Court of Bombay and the another passed by the Debt Recovery Tribunal, Ahmedabad as stated above.Now the question required to be examined without entering into merits of the matter is whether, in such a situation, the services of the workmen concerned has been terminated or not. SO far the company has not declared lock out. The company has not been closed according to the provisions of section 25-O of the Industrial Disputes Act, 1947. The situation is such that though the services of the workmen concerned have not been terminated and though they have to report every day and to get their presence marked in the muster, they are not getting their wages from June, 1999. In additional affidavit in reply filed by the respondent company, as stated above, the company has shown its readiness and willingness for the payment provided the finished gods which are available with the company is permitted to be sold and disposed of and has pointed out in the said additional affidavit in reply that the company is agreeable to give first priority to the payment of all the employees.

Now, before deciding this question as to whether the workers are entitled to any reliefs or not in such a situation, it would be profitable to refer to some of the decisions on the subject. In case of Workers of M/s. Rohtas Industries Ltd. and M/s. Rohtas Industries Ltd. reported in 1987 II LLJ page 1, the apex court has observed as under in paragraph 3 on page 2 and 3 :

"It is, no doubt,true that these products the stock of which have been shown in the report and the value of which has been shown by the Liquidator as Rs. 91,77,000/- is pledged with banks, is a priority in law in favour of the banks but it also could not be disputed that these stocks were the products of this industry before its closure and, therefore, the workers also contributed their labour and it is the result of their hard work that these stocks could be produced and in our opinion, therefore, it could not be said that the wages and emoluments for the period upto closure would not rank in priority. It is also significant that after the closure in July, 1984, till today, inspite of the

order passed by this court, the workers have not been paid. Their subsistence and living is also perhaps of paramount importance and has to rank with highest priority. It is in view of this as it appears that the Government of India is keen to have a scheme for revival of this industry. Learned Counsel for the State of Bihar also frankly conceded that so far as payment to the workers is concerned, the State Government also desires that they should be paid their salaries. It is no doubt true that at present, there are no assets available out of which the whole payment of all the dues to the workers from May, 1984 till today could be made but from out of these assets the products which are being in stocks valued at Rs. 91,77,000/-, the salaries and the dues of the workers from May 1984 till the date of closure could be made. It was contended that in case these stocks are liquidated and the amount collected are paid off to the workers, difficulty may arise as this asset which has been taken into account will not be available for the scheme of restarting the industry. Looking to all the circumstances and taking a broad and humane view of the situation, we are of the opinion that it would be just and proper that these goods which are lying in stock should be sold and out of the sale proceeds the workers should be paid their dues upto the date of closure (from May,,1984 to July, 1984 i.e. 8th July, 1984) so that at least they will get something for subsistence. Learned Counsel for State Bank of India pointed out that his client has paid for the insurance of certain assets and for loss thereof in whole or in part, the insurance has paid for the loss. The official liquidator may keep that amount separately and allow the State Bank to adjust the same against its insurances far as the stock pledged and the priority of the financial institutions are concerned, we have no doubt that they have other sufficient securities and properties of the company and, therefore, if this stock of finished products are sold to meet the basic requirement of the workers, their interest would not be in jeopardy. Again, from it, we also hope and trust that if the loss of this amount of Rs.91,77,000/somehow comes in way of the scheme of restarting the industry, the Government of India would find funds to save the situation and help early revival of the company. We,

therefore, direct that these stocks which are lying with the industry valued at Rs.91,77,000/shall immediately be disposed of and out of this the wages and other dues of the workers for the period from May, 1984 till 8th July,1984 shall be met. The balance, if any, will be utilized for meeting other pressing demands in the discretion of the Official Liquidator subject to orders of the Court. We are sure that the Official Liquidator will ensure that the disposal fetches the best of rates. We may also make it clear that issuance of the notification by the Bihar State Government will not come in the way of sale of these assets and payment to workers. We direct that this shall be completed within two months from today. The case may come for further directions in third week of July."

In the said decision, the apex court has considered that the stocks which are pledged to the banks were the products of the industry before its closure and, therefore, the workers also contributed their labour and it is the result of their hard work that these stocks could be produced and in view of such consideration, the apex court was of the opinion that that it could not be said that the wages and emoluments for the period upto closure would not rank in priority. The case of workers of M/s. Rohtas Ind. Ltd. v. M/s. Rohtas Ind. Ltd. (supra) was considered by the division bench of this Court in case of Textile Labour Association versus State of Gujarat and others reported in 1995 (1) GLH 12.

In case of Textile Lalbour Association (supra), the division bench of this court has considered the question of maintainability of the petition against private parties considering Article 21 and 226 of the Constitution of India. In para 19 of the judgment, the division bench of this court has observed as under:

"In view of the express language of Art. 21 of the Constitution of India, it is clear that it is not restricted for enforcement against the State only and Art. 226 also provides for issuing writ to any person. Therefore, the writ petition under Art. 226 of the Constitution for enforcement of Fundamental Rights can be issued to any person who need not be an authority of the State and it can be a private party."

In para 24 and 25 of the report commencing from

page 19, the division bench of this Court has observed as under:

"The contention that the peculiar facts of Rohtas Industries case (1987 II LLJ I) were different has also no merit. It is submitted that, in that case, the petition was a winding up petition pending and revival scheme was being evolved and the Supreme Court had found that other securities were sufficient and the interest of the bank would not be jeopardised.These are differences without distinction. None of these is a material difference.The relevant and material facts are identical namely that thousands of families of workmen were deprived of the livelihood inspite of having actually worked and produced goods and out of sale proceeds of those goods, they were not being paid their wages in view of these peculiar and crutial facts, the Supreme Court had passed the order and while doing so, the Supreme Court had brushed side the various claims of financial institutions which were secured creditors. Not only that, the Supreme Court has gone further and brushed aside even the higher priority of dues of public revenue and taxes and directed that the workmen should be paid their wages first and thereafter, if there is any surplus, it would be paid towards the sales tax and excise duty and the claim of the secured creditors would come thereafter and for going to that extent and fixing priorities, the Supreme Court observed that the saving of human lives should be paramount and that view has been endorsed again in case of Rohtas Industries 1989 (74) FJR 155 and it was observed that even the payment of public dues has to be postponed for saving human lives.

25. A similar view has been taken by another division bench of this court in the case of Amruta Mills referred to earlier. In that case also, following the supreme court judgment, the High Court had given priority to the payment of wages for the period for which the workers have already worked, over the claim of secured creditors. "

In case of Workers of M/s. Rohtas Ind.Ltd. versus M/s.ROhtas Ind.Ltd. reported in AIR 1990 SC 481,

in paragraph 5, the apex court has observed as under:

" 5. As already noted, the company has been closed down for more than five years now. A lot of assets are fast becoming useless and will soon become junk. Several attempts were made to dispose of some of the stocks held by the Official Liquidator but for one reason or the other it has not been possible to complete the sale and though this court had directed that the sale proceeds should be utilized for payment of arrear wages, that has not been feasible.Claims have been laid against the company and are perhaps awaiting adjudication. If the company is not revived and gets liquidated,the liabilities would turn out to be far in excess of the assets and notwithstanding first or second charge on the assets,the creditors may not appreciably benefit. This court cannot lose sight of the fact that living to about 10000 families has been denied for over five years and apart from national loss, the workmen have been put to serious jeopardy. In these circumstances, we are satisfied that it is of paramount importance that the company in respect of the viable units should be revived and allowed to come into production. Unless there be a moratorium in regard to the liabilities of the company for a reasonable time, the attempt to revive the company in respect of the three units is bound to be frustrated upon the intervention of the creditors, whereas once the company is revived and big commercial activities are carried on, profit is bound to be earned and a conscientious and prudent administration would certainly, in due course, provide adequate funds for satisfaction of the debts. At present, the question is one of priorities. It has to be prudently decided as to which ones should be allowed to go ahead and which should be made to wait."

Recently, in case of Mohan Kamalkar Sindgikar and others versus Joshi Metal INdustries and Others reported in 2000 (1) LLJ 859, the High Court of Karnataka has considered the question after relying upon the apex court's case in Workers of ROhtas 1987 (II LLJ page 1 and has also considered the decision of the division bench of this Court.

Therefore, considering the observations made by the apex court as well as the division bench of this

court and the High Court of Karnataka in case of Mohan Kamalkar SIngh (supra), and also taking into consideration the additional affidavit in reply filed by the respondent No. 1 Company in respect of the fact that they are prepared to sale the finished goods and they are also ready and willing to pay the amount of wages due in favour of the workmen, learned advocate Mr. Jani initially, no doubt,raised plea about maintainability of the present petition against the first respondent company but after pointing out readiness and willingness in the additional affidavit in reply, said contention has not been seriously pressed by Mr. Jani. Therefore, that question has not been examined by this court in this petition though in identical case, the division bench of this court has held in case of Textile Labour Association versus State of Gujarat 1995 (1) GLH 12, that the petition against the private party in such circumstances is maintainable. However, since the said contention has not been pressed by Learned advocate Mr. Jani in this petition, I am not deciding that question in this petition.

In additional affidavit in reply, the averments have been made that the company is agreeable to dispose of the said materials under the orders of this court and the realized sale proceeds thereof and other out standing book debt and the company is agreeable to give first priority to the payment of the employees.

In view of these averments made by the deponent in the affidavit in reply filed on behalf of the first respondent, according to my view, the concerned workmen are about 128 who are without wages since June, 1999 and their services have not been terminated,the company has not been closed and the company has also not declared lockout and yet, inspite of these facts, according to the lay off notice, each workmen are reporoting for duty every day and marking their presence in the muster roll and this fact has been admitted by respondent no.4. COnsidering this fact and also considering the fact that the workmen have remained without wages since June 1999, therefore, the claim of workers is having highest priority which is required to be protected by this court Considering the fact that there are two prohibitory orders passed by the High Court of Bombay and the Debt Recovery Tribunal, AHmedabad but the company is also having other assets which can meet with the requirement of the other financial institutions for which two proceedings are initiated against the first respondent company. In such a situation, the workers cannot be made to wait upto the finalization of such legal proceedings

pending before the High Court of Bombay as well as the Debt Recovery Tribunal, Ahmedabad. Therefore, considering all these aspects of the matter, I am of the view that the claim of the workers should be given highest priority and the respondents are required to be directed accordingly.I am, therefore, issuing following directions against the respondent No.1 Company which will meet the ends of justice.

In the present petition, it is not in dispute that on 24th June, 1999, respondent no.1 company has issued notice to the concerned workmen that because of the disconnection of the power supply by the Gujarat Electricity Board, the respondent company is not able to provide work with effect from 2nd Shift on 24th June, 1999 onwards and, therefore, all the concerned workmen are laid off from 24th June, 1999. According to the respondent company, 100 workers are with the respondent company. It is also not in dispute that the provisions of Chapter V-B of the Industrial Disputes Act,1947 are applicable to the facts of the present case and, therefore, it is the legal obligation on the part of the respondent company to see that the provisions of section 25-M of the Industrial Disputes Act, 1947 are followed before giving lay off to the concerned workmen.The respondent company is covered by the definition of the term 'industrial establishment' for the purposes of Chapter V-B. Therefore, the respondent company is an industrial establishment within the meaning of section 25-L of Chapter V-B and therefore, sec.25-M of the Act is applicable and the respondent company has not submitted any application as required under sub clause (1) of section 25-M of the Industrial Disputes Act. In such circumstances, when the application for permission under section 25-M (1) for laying off has not been filed by the respondent company or if such an application for permission for any lay off has been refused, in that circumstances, the provisions of sec.25-M sub clause (8) would be attracted which provides that where no application for permission under sub section (1) is made or where no application for permission under sub sec.(3) is made within the specified period or where the permission for any lay off has been refused, such lay off shall be deemed to be illegal from the date on which the workman had been laid off and the workmen concerned shall be entitled to all the benefits under any law for the time being in force as if he/they had not been laid off. In the present case, no permission under sec.25-M has been filed by the respondent company and no permission has been obtained so far by the respondent company for laying off and, therefore, naturally, according to the

provisions of section 25-M sub clause (8) thereof, the concerned workmen are entitled to full wages from the date of lay off i.e. 24th June, 1999 till the date of application submitted by the respondent company under section 25-O of the Industrial Disputes Act, 1947.

In the present case, after considering the readiness and willingness of the respondent company as mentioned in the additional affidavit in reply submitted by the respondent company, I am passing the said order with a direction to the respondent company to sell the finished goods as pointed out in paragraph 2 of the additional affidavit in reply dated 30th April, 2000 and after realising the sale, whatever amounts will be received by the respondent company,from that amount, after deducting the statutory expenses as pointed out in para 4 of the said affidavit in reply, the respondent company has to pay full wages to the concerned workmen who were on the muster roll of the respondent company as on 24th June, 1999 from 24th June, 1999 till the date of application for closure submitted by the first respondent before the Specified Authority under section 25-O of the Industrial Disputes Act, 1947.

However, at this juncture, two aspects are required to be taken into consideration and are required to be clarified. One fact is that whatever amount realised by the respondent company from the aforesaid sale of finished goods, from that amount, respondent company has to pay first full wages to the concerned workmen for the period from 24th June, 1999 till the date of closure application submitted by the company before the Specified Authority. After the payments are made to the concerned workmen, if any amount remains with the respondent company, then the said amount shall not be utilized by the respondent company for any other purpose but the said amount will be required to be deposited by the respondent company before this court within a period of ten days from the date of payments made to the workman. Second fact is required to be clarified that the matter which was pending before the Bombay High Court being Suit No. 2940 of 1999 filed by the ICICI Ltd. which has been transferred by the Bombay Court to the Debt Recovery Tribunal Bombay and another recovery application no. 10 of 2000 filed by the State Bank of India, Halol has been pending before the Debt Recovery Tribunal, Ahmedabad where in both the cases, there are interim directions, one issued by the Bombay High Court and the another issued by the Debt Recovery Tribunal, Ahmedabad restraining the respondent company from dealing with the movable and immovable assets of the respondent

company including the book debt and such prohibitory orders are in force and therefore, in such circumstances, when I am directing the respondent company to sell the finished goods considering their readiness and willingness as pointed out in the additional affidavit in reply dated 30th April, 2000, therefore, in case of any difficulty arise for the respondent company for implementing the directions issued by this court in this petition, then, the respondent company is free to approach the Debt Recovery Tribunal Ahmedabad and Debt Recovery Tribunal Bombay by submitting appropriate applications seeking appropriate directions to enable them to implement the directions issued by this court for suitable modification of the prohibitory orders issued by the Tribunals. As and when such an application is moved by the respondent company before the Debt Recovery Tribunal, Ahmedabad and Bombay for suitable modification of the prohibitory orders passed by the Tribunal in the suit and recovery applications referred to hereinabove, the Debt Recovery Tribunal will certainly consider the orders passed by this Court as well as the request made by the respondent company and will pass appropriate orders on merits in accordance with law. The tribunal will also take into consideration the fact that the respondent company is having large number of properties both movable and immovable which can satisfy the debts of other financial institutions like ICICI and therefore, dues of such financial institutions could be recovered from the respondent company and, therefore, these orders or directions issued by this court will not adversely affect in any way to the interest of the financial institutions.

Respondent No.2 Company is directed to sale the finished goods as pointed out in paragraph 2 of the additional affidavit in reply filed by Madan Gopal Yadad, Executive Director of the first respondent company and also to sell the finished goods of substandard quality or non moving product lying in the godown and after realising the sale proceeds, whatever sale proceeds received by the first respondent, after deducting the statutory payments as mentioned in paragraph 4 of the additional affidavit in reply filed by respondent No. 1 company, from remaining amount, the respondent company shall first pay full wages to the concerned 128 workmen who are on the muster roll of the respondent Company in the month of June, 1999. Said payments shall be made by the respondent company from June, 1999 till the date of closure application filed by the first respondent company under section 25-O of the Industrial Disputes Act,1947 before the Specified Authority. Said amount of full

wages is required to be paid by the respondent company after realising the said amount from the sale proceeds as stated above within two weeks from the date on which the said amount has been received from the sale proceeds by the respondent company. In view of the above observations and the directions, present petition and the civil application No. 3331 of 2000 shall stand disposed of with a liberty to the petitioner to move this court in case of difficulty by filing mere note in the registry of this court for revival of the present petition. Rule is made absolute in terms indicated hereinabove with no order as to costs.

Dt. 3.5.2000 (H.K.Rathod,J.)

Vyas